IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9807 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAGARBHAI DAHYABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MA KHARADI for Petitioner

MR RC KODEKAR, A.G.P. instructed by

M/S PATEL ADVOCATES for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 23/02/2001

ORAL JUDGEMENT

In this petition, which is filed under Article 227 of the Constitution, the petitioner has prayed to quash and set aside order dated July 24, 1992 rendered by

the Gujarat Revenue Tribunal in Review Application No. TEN.C.S. 5/92, refusing to review judgment dated April 10, 1992 rendered by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.S.145/88 by which order dated January 2, 1988 passed by the Deputy Collector, Valsad in Ceiling Revision Application No. 671/82 declaring that the petitioner holds 10 Acres & 20 Gunthas of land as excess land under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 ("Act" for short), came to be confirmed. The petitioner has also prayed to issue a writ of certiorari or any other appropriate writ or order to quash and set aside judgment dated April 10, 1992 rendered by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.S. 145/88 upholding order dated January 2, 1988 passed by the Deputy Collector,Valsad declaring that the petitioner is holding excess land admeasuring 10 Acres & 22 Gunthas under the Act.

2. The petitioner is holder of agricultural land bearing Block No.159, admeasuring 17 Acres & 33 Gunthas, situate at village Ambada, Taluka : Navsari, District : Valsad. The petitioner is also holding land admeasuring 1 acre & 6 gunthas jointly in Block No.71 of village Ambada. In all, the petitioner is holding 19 acres & 32 gunthas of land at village Ambada. Section 10 of the Act requires that every person holding land including exempted land,if any, in excess of the ceiling area, whether as owner or tenant, on the appointed day, has to furnish to the Mamlatdar in whose jurisdiction any piece of such land is situate, a true statement specifying particulars of all lands including their survey numbers, area etc. Section 13 of the Act requires the Tribunal to proceed to prepare list of persons holding surplus lands. On preparation of the list, the Tribunal published the same in prescribed manner together with a public notice in the prescribed form calling upon all persons affected thereby, to submit to the Tribunal their objections or suggestions. On publication of the list, the petitioner submitted statement giving particulars of lands held by him in Form No.II in view of the provisions of section 10 of the Act read with Rule-6 of the Gujarat Agricultural Land Ceiling Rules, 1961. The said statement was received by the Tribunal and was registered as Ceiling Case No. 13/77-Ambada. The Tribunal also served personal notice to the petitioner and Deputy Mamlatdar representing Government. At the time of hearing of the case, the petitioner represented before the Tribunal that his family consisted of four members i.e. he himself, his wife, adopted son Sureshkumar (who was adopted by the petitioner in the year 1968) and wife of adopted son

Sureshkumar,and was therefore, entitled to two units under the provisions of the Act. In support of his case that he had adopted Sureshkumar as his son in the year 1968, he produced adoption deed before the Tribunal. After taking into consideration the evidence adduced before it, the Tribunal by its order dated December 24, 1980 deduced that the petitioner was entitled to two units under the Act and was not holding any excess land under the Act. The order passed by the Tribunal in Ceiling Case No. 13/77-Ambada is produced by the petitioner at Annexure-A to the petition.

3. Section 37 of the Act enables the Collector to exercise suo motu revisional powers. The Deputy Collector, Valsad performing duties and exercising powers of Collector under the Bombay Land Ceiling Act, initiated suo motu proceedings on March 1, 1981 by calling for papers of Ceiling Case No. 13/77-Ambada. Suo motu revisional proceeding was registered as Ceiling Revision No.671/82. The Deputy Collector held that the Tribunal had not taken into consideration the provisions of the Hindu Adoption and Maintenance Act, 1956 before concluding that Sureshkumar was validly adopted by the petitioner and as adoption was not valid, grant of separate unit to the adopted son was not in accordance with the provisions of the Act. In view of the said conclusion, the Deputy Collector by his order dated January 2, 1988 declared that the petitioner was holding land admeasuring 10 acres & 20 gunthas as excess land under the Act and directed the Agricultural Tribunal to take appropriate steps for acquiring the same. The order passed by the Deputy Collector is produced by the petitioner at Annexure-B to the petition. Feeling aggrieved by the order of the Deputy Collector, the petitioner preferred Revision Application No. TEN.B.S.145/88. The only question which was posed for consideration of the Tribunal was whether Sureshkumar was the adopted son of the petitioner as on April 1, 1976 and whether the adoption was legal and proper. After considering the documentary evidence produced, the Tribunal held that the story of adoption propounded by the petitioner was false and put forward after April 1, 1976 when the Act came into force to take advantage of certain provisions of the Act. In view of the said conclusion, the Tribunal dismissed the revision application filed by the petitioner vide judgment dated April 10, 1992, which is produced at Annexure-C to the petition. Thereupon, the petitioner filed Review Application No. TEN.C.S.5/92 and requested the Court to review judgment dated April 10, 1992 rendered by it in Revision Application No.TEN.B.S.145/88. The order passed

below review application indicates that the finding recorded by the Tribunal that Sureshkumar was not adopted son of the petitioner and was, therefore, not entitled to separate unit, was not pressed, but what was agitated in the review application was that no inquiry was made about the fact whether the lands were getting irrigation water from January 24, 1971 to April 1, 1976 and, therefore, the lands of village Ambada could not have been treated as perennially irrigated land within the meaning of section 2(6)(i) of the Act. In review proceedings, the Tribunal found that the question whether there was no evidence about assured supply of water to the land in question, was never agitated by the petitioner either before the Agricultural Tribunal or before the Deputy Collector or before the Revenue Tribunal and, therefore, the petitioner was not entitled to raise new point in review application or entitled to the relief of review of order dated April 10, 1992 rendered in Revision Application No. TEN.B.S.145/88. The order passed by the Gujarat Revenue Tribunal in Review Application No. TEN.C.S.5/92 is produced by the petitioner at Annexure-D to the petition. The petitioner has averred that as the Deputy Collector had exercised suo motu revisional powers after expiry of one year from the date of order of the Agricultural Tribunal, the same ought to have been set aside by the Gujarat Revenue Tribunal. According to the petitioner, the petitioner had adduced cogent and reliable evidence to establish his case that he had adopted Sureshkumar as his son in the year 1968 and, therefore, the order granting separate unit to the adopted son passed by the Agricultural Tribunal ought to have been restored by the Gujarat Revenue Tribunal and order passed by the Deputy Collector declaring that the petitioner is holding 10 acres & 20 gunthas as excess land under the Act ought to have been set aside. What is claimed in the petition is that the certificate issued by Canal Officer as defined in clause (6) of Section 3 of the Bombay Irrigation Act, 1969 could not have been acted upon because the petitioner was never heard by the said officer before issuing the certificate and, therefore, the lands held by the petitioner could not have been treated as perennially irrigated lands within the meaning of sub-section (ii) of section 6 of the Act. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

4. Mr. M.A.Kharadi,learned counsel for the petitioner submitted that the Deputy Collector had exercised suo motu revisional powers after expiry of one year from the date of order of the Agricultural Tribunal and, therefore, the reliefs claimed in the petition

should be granted. The learned counsel pleaded that cogent and reliable evidence was led by the petitioner to establish the fact that the petitioner had adopted Sureshkumar as his son in the year 1968 and, therefore, the finding recorded by the Gujarat Revenue Tribunal that the adoption is not proved or that the adoption is not legal, deserves to be set aside. What was stressed by the learned counsel for the petitioner was that Canal Officer had issued certificate indicating that the petitioner was holding perennially irrigated lands at village Ambada without affording an opportunity of being heard and, therefore, the Gujarat Revenue Tribunal should have accepted the Review Application submitted by the petitioner. In support of his submissions, learned counsel placed reliance on the decision in AMRATBHAI BHIKHABHAI v. STATE OF GUJARAT, 1994(1) GLR 637.

5. Mr. R.C.Kodekar, learned A.G.P. contended that the Agricultural Tribunal had passed order in favour of the petitioner on December 24, 1980; whereas the Deputy Collector had exercised suo motu revisional powers on March 1, 1981 by calling record of Ceiling Case No.13/77-Ambada and, therefore, it is not correct to contend that the Deputy Collector had exercised suo motu revisional powers after expiry of one year from the date of order of the Agricultural Tribunal. The learned counsel for the respondents urged that the question whether Sureshkumar was adopted by the petitioner in the year 1968 or not is a pure question of fact, which is not liable to be disturbed in a petition filed under Article 227 of the Constitution. According to learned A.G.P., the petitioner had never questioned the validity of certificate issued by the Canal Officer either before the Agricultural Tribunal in Ceiling Case No. 13/77-Ambada or before the Deputy Collector in Ceiling Revision No.671/82 or before the Gjarat Revenue Tribunal in Revision Application No. TEN.B.S.145/88 and, therefore, no error can be said to have been committed by the Gujarat Revenue Tribunal in not entertaining the review application submitted by the petitioner. The learned counsel for the State emphasized that just orders have been passed by the Gujarat Revenue Tribunal and, therefore, the petition should be dismissed.

6. I have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. So far as exercise of suo motu revisional powers by Deputy Collector is concerned, it is clear that the Agricultural Tribunal had passed order dated December 24, 1980 in Ceiling Case No. 13/77-Ambada holding that the petitioner was not holding any excess

land under the Act. Thereupon, the Deputy Collector had called for papers of Ceiling Case No. 13/77-Ambada on March 1, 1988 and had exercised suo motu revisional powers. It is true that section 37 of the Act requires that suo motu powers can be exercised by the Collector before expiry of one year from the date of the order sought to be reviewed. However, the facts indicate that the Deputy Collector had exercised suo motu powers within one year from the date of order of the Agricultural Tribunal and, therefore, the impugned orders are not liable to be set aside on the ground that the Deputy Collector had exercised suo motu revisional powers after expiry of one year from the date of order of the Agricultural Tribunal. The first contention, therefore, has no substance and is hereby rejected. So far as adoption of Sureshkumar by the petitioner is concerned, the Gujarat Revenue Tribunal has given cogent and convincing reasons in Para-7 of its order dated April 10, 1992 for coming to the conclusion that adoption of Sureshkumar by the petitioner in the year 1968 is not proved and that the adoption was not legal and valid. As observed by the Tribunal, the petitioner could not produce best evidence before the Deputy Collector in suo motu revision proceedings and had tried to produce evidence after 1976, which was thoroughly irrelevant. When the Mamlatdar and A.L.T. issued notice to the petitioner on September 12, 1980 calling upon him to produce birth certificate, school leaving certificate of his sons and daughters, the petitioner produced school leaving certificate No. 19/72-73 from the Principal of M.N.Vidyalaya, which indicated the name of Sureshkumar as "Patel Sureshbhai Jivanbhai" with birth date as July 1, 1955. In view of this certificate, the Tribunal rightly concluded that if the petitioner had adopted Sureshkumar as his son in the year 1968, the certificate would not have mentioned the name of "Jivanbhai" as father of Sureshkumar. Moreover, in the deed which was produced by the petitioner,there was no mention about the necessary religious ceremonies of adoption having been gone through. On overall view of the matter, the Tribunal has concluded that adoption of Sureshkumar by the petitioner in the year 1968 is not proved. The question whether Sureshkumar was adopted by the petitioner in the year 1968 or not is essentially a question of fact and finding reached thereon by the Tribunal is not liable to be disturbed in a petition filed under Article 227 of the Constitution. Moreover, as observed by me earlier, the point regarding adoption of Sureshkumar was not pressed by the petitioner at the time of hearing of Review Application No. TEN.C.S.5/92. Thus, the petitioner is not entitled to any relief on the ground that Sureshkumar

was is adopted son and was entitled to a separate unit under the Act. As far as the last point regarding validity of certificate issued by Canal Officer is concerned, it is to be noticed that the validity of certificate was never disputed by the petitioner before the Mamlatdar & A.L.T., Navsari in Ceiling Case No.13/77-Ambada. From the said order, it does not become clear whether the certificate issued by Canal Officer was produced by the petitioner or by the Deputy Collector, who had remained present on behalf of the Government. In fact, the case of the petitioner in review application was that the lands were not getting irrigation water from January 24, 1971 to April 1, 1976 and there was no evidence about assured supply of water to the lands situate at village Ambada, but the validity of certificate was never questioned by the petitioner at any stage. The validity of the said certificate could not have been gone into without hearing the Canal Officer, who had issued the same at the relevant time. As the point regarding validity of the certificate was never questioned by the petitioner either before the Mamlatdar & A.L.T. or before the Deputy Collector or before the Gujarat Revenue Tribunal in Revision Application No. TEN. B.S.145/88, I am of the view that the Tribunal didnot commit any error in not entertaining the review application. Having regard to the facts of the case, the principles laid down by the learned Single Judge of this Court in AMRATLAL BHIKHABHAI PATEL (supra) cannot be made applicable to the facts of the present case and the petitioner is not entitled to any relief on the ground that the lands in question could not be treated as perennially irrigated lands. The net result of the above discussion is that I do not find any substance in the petition and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged, with no order as to costs. Interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

(patel)